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WILMER, CUTLER & PICKERING

2445 M STREET, N.W.

WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000

FACSIMILE (202) 663-6363

JONATHAN J. FRANKEL

DIRECT LINE (202)

663-6113

INTERNET JFRANKEL@WILMER.COM

4 CARLTON GARDENS  
LONDON SW1Y 5AA  
TELEPHONE 011 (44) 171 839-4466  
FACSIMILE 011 (44) 171 839-3537

RUE DE LA LOI 15 WETSTRAAT  
B-1040 BRUSSELS  
TELEPHONE 011 (32) 231-0903  
FACSIMILE 011 (32) 230-4322

FRIEDRICHSTRASSE 95  
BRIEFKASTEN 29  
D-10117 BERLIN  
TELEPHONE 011 (49) 30 2022-6400  
FACSIMILE 011 (49) 30 2022-6500

June 1, 2001 **RECEIVED**

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*By Hand Delivery*

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
Room TW-A325  
445 12th Street, S.W.  
Washington, DC 20554

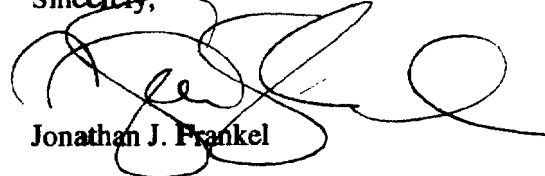
**Re: Ex Parte, CC Dkt. No. 98-147 (Deployment of Wireline Services Offering Advanced Telecommunications Capability); CC Dkt. No. 96-98 (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)**

Dear Ms. Salas:

On behalf of Qwest Communications International, Inc. ("Qwest"), this is to notify the Commission that on May 31, 2001, Melissa Newman and Anne Cullather of Qwest and the undersigned met with Chairman Michael K. Powell and Kyle D. Dixon, Legal Advisor to the Chairman. The purpose of the meeting was to discuss CLECs' needs for central-office collocation of multifunction equipment and CLEC-to-CLEC cross-connects, as well as the legal justification for these requirements. Qwest's arguments are outlined in the two attached handouts from the meeting.

Two copies are enclosed for filing in each of the two above-referenced dockets pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



Jonathan J. Frankel

Attachment

cc: The Hon. Michael K. Powell  
Kyle D. Dixon

No. of Copies rec'd 013  
List A B C D E

**ORIGINAL**

**QWEST EX PARTE**

**COLLOCATION**

**CC DOCKET NO. 98-147**

**MAY 31, 2001**

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## COLLOCATION OF MULTI-FUNCTIONAL USE EQUIPMENT

Qwest is both an incumbent LEC and a CLEC, and approaches collocation issues as a seller and purchaser of collocation space.

Qwest is in the unique position of having to balance the need and desire of a CLEC for collocation space for its own uses, and the legitimate interest of an incumbent LEC in making use of its limited central office space for its own purposes.

Statistics: In region, Qwest has provided over 2100 collocation arrangements to 70 different CLECs. Out of region, Qwest has collocated in over 400 wire centers in the Verizon and SBC territories to support its CLEC initiatives.

### Collocation Test:

- Qwest views a piece of equipment as being necessary for interconnection and/or access to UNEs when the equipment is actually used for one or both of those purposes.
- As a legal matter, if the equipment is used *primarily* for interconnection and/or access to UNEs, it meets the necessary test and satisfies the D.C. Circuits requirement of a limiting principle. As long as the primary purpose or use of a piece of equipment is "directly related to and thus necessary, required, or indispensable to 'interconnection or access to unbundled network elements,'" *GTE*, 205 F.3d at 424, the ability to use that equipment for other purposes would not disqualify the equipment from collocation.
- As a policy matter, there is no reason to limit or prohibit the other natural and beneficial functionalities, which the equipment can efficiently and profitably perform. If CLECs were limited in their use of the equipment it would freeze the menu of services that CLECs could provide at current technological levels (unless CLECs were willing to take out the equipment and abandon the collocation space).

Certainly, any standard the Commission sets can be revisited in response to future developments in the equipment market or evidence of abuse by CLECs.

Moreover, the additional equipment functions at issue (e.g., circuit and packet switching) are in fact "necessary for interconnection" even under the strictest reading of necessity. "Interconnection" in section 251(c)(6) refers to the duty as defined in section 251(c)(2). That section permits CLECs to obtain interconnection "for the transmission and routing of telephone exchange service and exchange access." Equipment with a switching function (circuit or packet) is required or indispensable for the routing of traffic.

Section 251**○**(6) refers to the collocation of "equipment" and contains no requirement that a single piece of off-the-shelf "equipment" be split into multiple pieces with separate functions.

- Qwest's experience is that there is no correlation between functionality and size. The fact that a piece of equipment provides additional functionalities (besides interconnection and/or access to UNEs) does not mean that the equipment will be larger than equipment that only performs interconnection and UNE access functionalities. In fact, given technological advances, new pieces of equipment that are multi-functional are often smaller in size than their predecessors. Thus, there is no reason that Qwest's approach will lead to more rapid space exhaustion.
- As the manufacturers' comments in this proceeding confirm, single-function equipment is fast becoming unavailable in the market, and many concededly permissible functions, such as statistical multiplexing, will not work unless integrated with so-called "additional" functions such as packet switching.

The types of equipment that should be allowed into the collocation site are multiplexers; ATM switches; DSLAMs; routers and concentrators; frame relay switches; Ethernet switches.

#### **COMMISSION AUTHORITY TO IMPOSE CROSS-CONNECTS**

Qwest's proposed test applies to cross-connections between and among CLECs. If the equipment is lawfully collocated in the central office because its primary purpose is to perform interconnection and access functions (and it actually performs those functions), CLECs should be allowed to provide cross-connections to other CLECs.

A request for cross-connection is not a request for additional collocation, since cross-connects do not require the ILEC to set aside any more space beyond what the CLEC has already legitimately and lawfully requested. Cross-connects are simply a way of using collocation. The Commission may require cross-connects under its section 251**○**(6) authority to set "terms[] and conditions" for the use of collocation "that are just, reasonable, and nondiscriminatory."

Connections to other CLECs are also "necessary for interconnection," as defined in section 251**○**(2), since they are required or indispensable for the routing of traffic to the other CLECs' customers. But this authority supports only *indirect* cross-connects (connections *via* the ILEC's facilities) since section 251**○**(2)'s duty is limited to interconnection with the *incumbent's* network.

### The Structure of 47 U.S.C. § 251(c)(6)

- As the D.C. Circuit itself recognized, “any search for ‘plain meaning’ in” section 251(c)(6) “is fruitless.” *GTE Svc. Corp. v. FCC*, 205 F.3d 416, 421 (D.C. Cir. 2000). The relevant language — that the ILEC provide “physical collocation of equipment necessary for interconnection or access to unbundled network elements” — can be read two different ways, and the Commission would have discretion to resolve that ambiguity in a reasonable manner:
  - The “necessary” limitation could modify the entire phrase “physical collocation of equipment.” Under this reading, the Act simply requires ILECs to provide whatever collocation is necessary for CLECs to interconnect or gain access to UNEs, and does not limit either the kinds of equipment CLECs may collocate or the CLECs’ activities once they legitimately obtain collocation space.
  - Alternatively, the “necessary” limitation could modify only the word “equipment,” severely restricting the types of facilities CLECs can collocate according to its function.

The first reading better comports with the Act’s pro-competitive purpose. It also makes more sense in light of Congress’s intent to clarify the Commission’s takings authority: the size of collocated equipment (and hence the degree of physical occupation) does not turn on the number of functions it performs or what other equipment it is connected to. This reading is a solid basis for authorizing collocation of multifunction equipment and CLEC cross-connects.

### Multifunction Equipment

- The additional equipment functions at issue are in fact “necessary for interconnection,” even under the strictest reading of necessity. “Interconnection” in section 251(c)(6) refers to the duty as defined in section 251(c)(2). That section permits CLECs to obtain interconnection “for the transmission and routing of telephone exchange service and exchange access.” Equipment with a switching function (circuit or packet) is required or indispensable for the routing of traffic.
- Section 251(c)(6) refers to the collocation of “equipment” and contains no requirement that a single piece of off-the-shelf “equipment” be split into multiple pieces with separate functions. As the manufacturers’ comments in this proceeding confirm, single-function equipment is fast becoming unavailable in the market, and many concededly permissible functions, such as statistical multiplexing, will not work unless integrated with so-called “additional” functions such as packet switching.
- The Commission would satisfy the D.C. Circuit’s requirement of a limiting principle by adopting Qwest’s proposed “primary purpose” rule: As long as the

*primary* purpose or use of a piece of equipment is “directly related to and thus necessary, required, or indispensable to ‘interconnection or access to unbundled network elements,’” *GTE*, 205 F.3d at 424, the ability to use that equipment for other purposes would not disqualify the equipment from collocation.

### **CLEC Cross-Connects**

- A request for cross-connection is not a request for additional collocation, since cross-connects do not require the ILEC to set aside any more space beyond what the CLEC has already legitimately requested. Cross-connects are simply a way of *using* collocation. The Commission may require cross-connects under its section 251(c)(6) authority to set “terms[] and conditions” for the use of collocation “that are just, reasonable, and nondiscriminatory.”
- Connections to other CLECs are also “necessary for interconnection,” as defined in section 251(c)(2), since they are required or indispensable for the routing of traffic to the other CLECs’ customers. But this authority supports only *indirect* cross-connects (connections over the ILEC’s facilities) since section 251(c)(2)’s duty is limited to interconnection with the *incumbent’s* network.